ORIGINAL



**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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|---|---|---|
| In the Matter of | ) | |
| Amendment of Section 73.202(b) | ) | |
| Table of Allotments, | ) | MM Docket No. 93-136 |
| FM Broadcast Stations, | ) | RM-8161 |
| Key Colony Beach, Key Largo and | ) | |
| Marathon, Florida | ) | |

To: Chief, Allocations Branch

**JOINT PETITION FOR RECONSIDERATION**

**AMATURO GROUP, LTD.**
**WSUV, INC.**
**JUPITER BROADCASTING CORPORATION**

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Date: September 21, 1994

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**Summary**

The Allocation Branch must reconsider its decision dismissing the Joint Counterproposal as procedurally defective as of the date of filing. The policy under which the Joint Counterproposal was found defective was neither intended to apply to counterproposals nor did it explicitly require that reimbursement statements be made as of the date of filing. However, if such policy were applicable to counterproposals, it would not require dismissal where the minor procedural omission was promptly corrected prior to the close of the record, and no harm had resulted would result from such omission. Furthermore, in light of the relative merits of the proposals, it would be contrary to the public interest, and the Commission's fundamental Congressional mandate, to strictly apply a minor procedural rule in a manner that serves no stated administrative goal while effectively preventing 1,400,000 persons from receiving additional new service. Such a conclusion is even more apparent when one considers the fact that Commenters have submitted a solution to the FCC which would allow all parties to achieve their stated goals.

In addition, it was error for the Allocation Branch to grant SBSF the extraordinary relief requested on the basis of the evidence submitted as justification for its proposal. Finally, given the numerous cases of independently verifiable misrepresentations of fact by SBSF to the Commission in this proceeding, it was error for the Allocations Branch to grant SBSF's proposal without further inquiry. Therefore, reconsideration should be granted.

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**JOINT PETITION FOR RECONSIDERATION**

Amaturo Group, Ltd. ("Amaturo"), licensee of WOKC-FM, Indiantown, Florida[1]; WSUV, Inc. ("WSUV"), licensee of WROC(FM), Fort Myers Villas, Florida[2]; and Jupiter Broadcasting Corporation ("JBC"), permittee of WADY(FM), Jupiter, Florida (collectively "Commenters"), by their attorneys, hereby respectfully request reconsideration of the Commission's Report And Order in this proceeding.[3] The Report and Order essentially granted the proposal of Spanish Broadcasting System of Florida ("SBSF") to reshuffle the

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[1] An assignment of license for WOKC-FM from Okeechobee Broadcasters to Amaturo was consummated on June 1, 1994, and on June 15, 1994, Amaturo submitted a statement expressing its continued interest and intent to participate in this proceeding. In addition, WOKC-FM as now operational as Class C2 station at Indiantown, Florida, and Amaturo has recently filed an application for a license to cover the facilities.

[2] An assignment of license for WSUV(FM) from Sunshine Broadcasting, Inc. to WSUV, Inc. was consummated on April 22, 1994. In addition, the Station's Call Sign has been changed from WSUV to WROC(FM). A statement regarding the new licensee's intention to continue to pursue the upgrade of its facilities through this proceeding was filed with the Commission on May 9, 1994.

[3] 59 Fed. Reg. 43064 (August 22, 1994).

frequencies of three Florida Keys stations in order to allow SBSF to achieve its stated goal to eliminate "Receiver-Induced Third Order Intermodulation Interference ("RITOIE") in some automobile receivers within the vicinity of the ... antenna." The Report and Order also incorrectly dismissed the Commenters' Joint Counterproposal on an inapplicable procedural technicality. For the reasons discussed below, the Commission's actions dismissing the Joint Counterproposal without consideration and granting SBSF's proposal constitute error, and are contrary to the public interest and the Commission's primary congressional mandate concerning the fair and efficient allocation of channels.

**BACKGROUND**

On December 17, 1992, SBSF proposed the following changes to the table of allotments for the sole stated goal of relieving the effects of RITOIE observed in some car radios within the vicinity of its shared tower:

| FM Station | Existing | Modified |
|---|---|---|
| WZMQ (Key Largo, FL) | 280C2 | 292C2 |
| WAVK (Marathon, FL) | 292A | 288A |
| WKKB (Key Colony Beach, FL) | 288C2 | 280C2 |

On June 3, 1993 the Commission issued a Notice of Proposed Rule Making seeking comment on the proposal and requesting evidence of the alleged interference.

On July 26, 1993 Commenters filed a Joint Counterproposal seeking the following alternative changes to the Table of Allotments, in order to provide new service to an additional

1,339,675 persons:[4]

| FM Station | Existing | Modified |
|---|---|---|
| WOKC (Indiantown, FL) | 276C2 | 276C1 |
| WSGL (Naples, FL) | 276C3 | 292C3 |
| WSUV (Fort Myers Villas, FL) | 292A | 275C2 |
| WAFC (Clewiston, FL) | 292A | 258A |
| WADY (Jupiter, FL) | 258A | 292C3 |

The Joint Counterproposal while stating the Commenters' intention to reimburse WAFC for its reasonable expenses in changing channels, inadvertently omitted the same statement with respect to WSGL.

On August 23, 1993, Commenters submitted Joint Reply Comments where, without prior prompting from other parties or the Commission, they corrected their inadvertent oversight with respect to the Naples Florida station by stating on the record:

> Commenters hereby reaffirm their desire to have the above modifications made to the Table of Allotments adopted; reaffirm that upon grant of the changes they will promptly apply for and build the newly authorized facilities and reaffirm their obligation and willingness to pay for the costs incurred by WAFC, Clewiston, Fl and WSGL, Naples, FL in moving to their new channels. (emphasis added).

In addition, Commenters advanced a solution for the Commission, whereby the stated goals of all parties could be satisfied.[5]

On the same date both SBSF and Sterling Communications Corp. ("Sterling"), licensee of WSGL, filed reply comments in which they

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[4] On that same date, SBSF submitted an expression of continued interest, and Key Chain, Inc. the licensee of WAVK(FM) at Marathon, Florida, submitted a counterproposal modifying SBSF's changes to include an upgrade for WAVK to a Class C2 facility on Channel 288.

[5] That solution involved the modification of SBSF's proposal as revised by Key Chain, to allot Channel 288C2 to Key Largo in lieu of 292C2, and 237C2 to Marathon in lieu of 237C2.

pointed out Commenters' initial omission of a reimbursement statement with respect to WSGL. In its pleading Sterling stated that it was not opposed to such a change, and expected that the omission was an oversight which would be remedied in a supplemental pleading.

In a series of supplemental pleadings seeking to correct misstatements of fact made by SBSF regarding the coverage gains proposed by Commenters, and the availability of a workable reference site for the proposed Fort Myers Villas allotment, Commenters repeatedly pointed to easily verifiable factual misstatements by SBSF which would constitute not only a lack of candor, but active misrepresentation of facts to the Commission.

The Report and Order in MM Docket 93-136 was released on August 16, 1994 and appeared in the Federal Register on August 22, 1994. The Report and Order essentially granted SBSF's proposal as modified by Key Chain's counterproposal and dismissed the Commenters' Joint Counterproposal as having been procedurally defective at the time of filing.

## I. THE DISMISSAL OF THE JOINT COUNTERPROPOSAL CONSTITUTES ERROR

### A. Commenters Were Not Afforded Notice That A Failure To Include A Reimbursement Statement In Their Counterproposal Would Be Grounds For Dismissal

In the Report and Order, The Allocations Branch argues that because Commenters failed to make a reimbursement statement in the Joint Counterproposal with respect to WSGL, that such counterproposal was not technically and procedurally correct at the

time of filing, and therefore was subject to dismissal. Such a conclusion is incorrect. Commenters acknowledge that it is long established policy that licensees required to change channels in order to facilitate another party's proposed change in the Table of Allotments are entitled to reimbursement for their reasonable expenses from the parties benefiting from the change.[6] However, the proposition that failure to acknowledge this obligation at the time that a counterproposal is filed is fatal is not clearly established.

In Dismissing Commenters' counterproposal, the Allocations Branch cites to Fort Bragg, California, 6 FCC Rcd 5817 (1991) and Broken Arrow and Bixley, Oklahoma and Coffeeville, Kansas, 3 FCC Rcd 6507 (1988), recon. denied, 4 FCC Rcd 6981 (1989), for the proposition that counterproposals must be technically and procedurally correct at the time of their filing. However in each of those cases the counterproposal contained major technical defects which would violate Commission rules and would otherwise render the proposal ungrantable.[7] Commenters' Joint Counterproposal contained no such blatant technical violations.

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[6] See Circleville, Ohio 8 FCC2d 159 (1967)

[7] In both Fort Bragg and Broken Arrow, the counterproponent in seeking to change its community of license and channel proposed to move its transmitter site to one beyond the maximum distance allowed from it proposed community of license. Because no waiver of that spacing rule could be sought in an allotment proceeding, the Commission in each case found the counterproposal defective.

It has long been recognized that administrative fairness requires that acceptability requirements be made explicitly, for good reason, and that full notice be provided to parties whose rights may be affected.[8] As support for the existence of a strict return policy regarding reimbursement statements on Counterproposals, the Allocations Branch cites to Lonoke, Arkansas and Clarksdale, Mississippi, 6 FCC Rcd 4861 (1991) and York, Alabama, 4 FCC Rcd 6923 (1989). These cases in turn cite to a policy statement made in Brookville and Punxatawney, PA, 3 FCC Rcd 5555 (1988). From a close reading of the policy pronounced in Brookville, it is apparent that no notice of an explicit policy was provided to prospective filers of counterproposals in allotment proceedings that thereafter, absent any appropriate reimbursement statement on the date of filing, their counterproposal would be dismissed as defective.

In Brookville, a case involving a proposal for a non-adjacent channel upgrade, the Commission stated a new policy prospectively affecting "competing expressions of interest" in allotment proceedings. However, the policy statement made no mention of requirements affecting "counterproposals." Further, it is clear from that case that the Commission recognized and understood that there is a distinct difference between a "counterproposal" and a

[8] Matthew D. Wiggins, Jr., 61 R.R.2d 581 (1986) (citing Salzer v. FCC, 778 F.2d 869, 877 (D.C. Cir. 1985) and Radio Athens, Inc. v. FCC, 401 F.2d 398 (D.C. Cir. 1968)).

"competing expression of what is the difference interest."[9] Thus, the Commission did not provide prospective filers of "counterproposals" with notice of an explicit policy that a counterproposal would be found to be defective and subject to dismissal if the commenter failed to make all necessary reimbursement pledges. It was therefore error for the Allocations Branch to rely on the policy enunciated in Brookville to dismiss Commenters' Joint Counterproposal.

B. Even If Arguendo The Brookville Policy Applied to Counterproposals, It Does not Require Dismissal for Failure to Make Reimbursement Pledges As Of The day of Filing

Neither the Brookville case nor the cases following the policies enunciated in Brookville require the draconian result reached by the Allocations Branch in this case. In Brookville, at the close of the pleading cycle, the Commission was faced with a situation in which a party that had filed a competing expression of interest for the upgraded channel, had failed to make the reimbursement statement already advanced by the proponent. This omission left the Commission unable to render a final decision in the case based upon the record compiled during the pleading cycle,

[9] Immediately following the prospective statement of policy affecting "competing expressions of interest," the Commission stated: "No additional competing expressions of interest in use of Channel 288B1 at Brookville or counterproposals to its allotment will be accepted since an opportunity for the filing of such interest and/or counterproposals has already been provided." 3 FCC Rcd. at 3556.

and required that the Commission delay the proceeding and service to the public while it requested and awaited such a statement from the interested party.

The Commission stated that in order to avoid such delays in the future, "parties filing competing expressions of interest in cases which require channel changes by existing licensees to accommodate the new allotment are also required to state an intention to reimburse the affected parties. The absence of such a statement will render the expression of interest invalid." 3 FCC Rcd at 3556. This language does not specifically require dismissal if on the date filed, the initial expression of interest does not contain an appropriate reimbursement pledge, nor does it preclude the subsequent acceptance of a reimbursement statement, if made on the record prior to the close of the pleading cycle. Indeed, because in practice the Commission does not address the merits of the various proposals in an allotment proceeding until after the filing of reply comments, a reimbursement statement made by the close of the pleading cycle would equally avoid the type of delay identified by the Commission in Brookville.

Such a conclusion is consistent with cases following Brookville. In Mary Esther, Apalachecola and Crawfordville, Florida, the Allocations Branch found a proposal defective only upon a conclusion that "the petition and the record do not contain a reimbursement pledge" 7 FCC Rcd 1417 (1992)(emphasis added). In addition, in York, Alabama, a case involving a competing expression of interest found defective under the Brookville policy, the

Allocations Branch noted that such party had failed to make a reimbursement commitment until after the record closed. 4 FCC Rcd 6923 (1992).

Furthermore, the Brookville policy does not require dismissal as the Allocations Branch argues. In East Wenatchee, Ephrata and Chelan, Washington, the Allocations Branch, citing to Brookville, stated that a failure to make the required reimbursement pledge "could result in a denial of the proposal." 8 FCC Rcd 5193 (1993)(emphasis added). In fact, the Commission has previously found that a failure to satisfy certain procedural requirements set forth in Brookville was not fatal where the omission was promptly rectified and resulted in no harm or prejudice to other parties. See Neenah-Manesha, Rhinelander and Rudolph, Wisconsin, 7 FCC Rcd 4594 (1992).

In the instant case, the Commenters' did make a reimbursement pledge within their Joint Counterproposal acknowledging their obligation under Circleville to reimburse parties required to change channels in order to accommodate their proposed changes to the Table of Allotments. While Commenters' reimbursement pledge specifically referenced station WAFC, through an inadvertent oversight WSGL was not included. That omission was promptly remedied, without prompting from the Commission or other parties, prior to the close of the record. Unlike Brookville, the record in this proceeding was complete at the close of the pleading cycle, and the Commission was in a position to evaluate the comparative merits of the two proposals. Therefore, Commenters' inadvertent

omission would not have resulted in any delay of the type identified in Brookville. Furthermore, in comments on the Joint Counterproposal, Sterling, the party most directly affected by the omission, stated that it was not opposed to such a change. Sterling also noted its suspicion that the omission was an inadvertent oversight which could easily be remedied. Thus, as in Neenah-Menesha, Commenters' inadvertent oversight did not prejudice any party, and was promptly corrected upon discovery prior to the close of the record. Therefore, the Allocations Branch should not have dismissed the Joint Counterproposal.

### C. The Strict And Inflexible Application Of A Minor Procedural Rule in A Manner That Serves No Administrative Goal And Would Otherwise Disserve the Public Interest Is Arbitrary and Capricious

If the procedural requirements set forth in Brookville were properly applicable to counterproposals in rulemaking proceedings, their strict interpretation under the facts presented by the instant case would be arbitrary and capricious. As noted above, the procedural rules set forth in Brookville were adopted for the purpose of avoiding delays that would be caused by an incomplete record at the close of the pleading cycle. Where, as in the instant case, an incomplete reimbursement statement is corrected before the close of the pleading cycle, such delay is avoided and the policy objectives underlying Brookville are satisfied. As noted above, neither Brookville nor the cases following Brookville demand an inflexible application of the policy, especially where the matter is promptly remedied before the close of the record and

no harm has resulted. In the present case, because Commenters had demonstrated their knowledge of their obligations under Circleville at the time they filed their counterproposal, and promptly corrected their inadvertent omission of WSGL in their reimbursement statement prior to the close of the record, application of a strict procedural rule to dismiss the Joint Counterproposal as defective as of the time of filing would serve no administrative goal.

Furthermore, such a strict application of the policy would disserve the public interest by ignoring the comparative merits of the Joint Counterproposal. Whereas the SBSF petition proposed no new service, the Joint Counterproposal, upgrading the facilities of three stations, would provide new service to 1,339,675 persons. In addition, as noted in comments submitted by Vero Beach FM Radio Partnership, a grant of the Joint Counterproposal would also allow WWDO(FM) to increase its facilities to provide new service to an additional 66,479 persons.[10] Thus, the Allocations Branch's strict and inflexible interpretation and application of the procedural requirements set forth under Brookville and its progeny without regard to the comparative merits of the proposal would serve no administrative purpose, and would effectively deny 1,406,154 persons the possibility of new service.[11] It is clear that in past

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[10] See Reply Comments of Vero Beach FM Radio Partnership, filed with the Commission on August 23, 1993.

[11] In York when the Commission dismissed a competing expression of interest on procedural grounds, the public ultimately received the benefit of the proposed new service from the original proponent, and arguably in less time. However, if the Joint Counterproposal is found defective the public is

cases applying the Brookville policy the Allocations Branch has weighed the relative merits of a proposal in its analysis.[12] Therefore, a strict application of this minor procedural requirement, without even considering the public interest in granting the proposal is arbitrary and capricious, and contrary to the Commissions mandate under Section 307 of the Communications Act of 1934.[13]

## II. THE GRANT OF SBSF'S PROPOSAL CONSTITUTES ERROR

### A. Based on The Evidence Submitted Concerning Alleged Intermodulation Interference and The Presence of Alternative Solutions The Record Did Not Warrant A Modification of the Table of Allotments

On the basis of the record evidence, SBSF simply did not satisfy the high burden of proof needed to justify the relief granted by the Allocations Branch. In its Petition for Rule Making, SBSF stated that "WZMQ(FM) has had reports of Receiver Induced Third Order Intermodulation ("RITOI") interference in some automobile receivers within the vicinity of the shared antenna."

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effectively denied the benefits of the proposal.

[12] See Lonoke, 6 FCC Rcd at 4861 n.4. In that case, the Allocations Branch dismissed a party on procedural grounds only after concluding that its proposal would have lost on a comparative basis. Here, the overwhelming difference in proposed service makes it almost certain that the Joint Counterproposal would prevail over that of SBSF on a comparative basis.

[13] Such a conclusion is even more apparent when one considers the fact that the Commenters provided the Allocations Branch with a solution proposal that would have allowed the Commission to satisfy the stated interests of all parties.

Based solely on this vague and self-serving statement, The Allocations Branch found it in the public interest to issue a Notice of Proposed Rulemaking, but requested that SBSF in subsequent comments provide "evidence" of such interference.

In response to the Commission's request for evidence, SBSF submitted no mathematical algorithms demonstrating the combination of frequencies which would be likely to cause intermodulation on the frequency used by WCTH(FM). Similarly, SBSF provided no test measurement data demonstrating or even suggesting the presence of intermodulation. SBSF did not even supply letters from listeners detailing the seriousness of the problem. Instead SBSF provided a statement from its own station engineer vaguely stating that some informal tests were done by himself and others were performed by a third party engineer, and that intermodulation was observed. Conspicuously no supporting statement was offered from that third party engineer.

As further support SBSF submitted a very brief letter from the engineer of the station which supposedly is receiving the RITOI interference. However, while that letter referred to complaints, it failed to supply any detail about the problem. This brevity on the part of a station supposedly receiving serious interference is certainly suspicious. Based on the statements submitted, one could reasonably infer that the alleged intermodulation problem is more important to SBSF than to the licensee of the station supposedly

being interfered with.[14] Clearly the evidence placed into the record is not sufficient to warrant an amendment to the table of allotments, much less the extraordinary remedy of a forced channel change for two other stations. See e.g. University of Minnesota 25 R.R.2d 610 (1972).

In addition, the Allocations Branch should have concluded that SBSF's stated goal of remedying the intermodulation observed on some automobile radios within close proximity of the shared tower, could not constitute sufficient justification for the changes requested. As a preliminary matter interference is often observed within close proximity to broadcast towers. In addition the Commission has previously stated that the occurrence of intermodulation in car radios or portable receivers is excluded from consideration since these devices are inherently transient in nature.[15] Therefore, the Allocations Branch should have found insufficient grounds to grant SBSF's requested relief.

Finally, because of the presence of a solution on the record that would have eliminated or substantially reduced the effects of

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[14] A letter was submitted by the Florida Keys Electric Cooperative Association stating that it utilizes a subcarrier of WCTH for load control but does not state the nature or amount of equipment within the alledged interference area, nor does it describe the nature or extent of such interference, or the absence of alternative solutions.

[15] See WKLX, Inc., 6 FCC Rcd 225, 227 (1991) (A mobile receiver moving through the potential interference area will encounter constantly varying propagation paths and signal strengths from the pertinent stations, resulting in a continuously varying potential for interference).

the alleged intermodulation interference without the need for an amendment to the Table of Allotments, the extraordinary relief of requiring forced channel changes for third party stations provided to SBSF by the Allocations Branch was inappropriate and unwarranted. In its reply comments Vero Beach noted that it is generally acknowledged that intermodulation may be overcome simply by separating the two stations that are causing the interference. Vero Beach also noted that SBSF was proposing a reference site for its proposed channel that was 20 kilometers from its currently licensed facilities. Vero Beach therefore observed that SBSF could quite simply move its facilities and remain on its existing channel. Such a solution would eliminate any intermodulation, while avoiding inconvenience to WKKB or WAVK, the stations required to change channels to accommodate SBSF's proposal and would relieve SBSF of any financial responsibility for relocating the affected stations to their new channels. Thus, the Allocations Branch erred in granting SBSF its requested change.

### B. Given SBSF's Numerous Misrepresentations Of Fact Called To The Commission's Attention And Independently Verifiable From The Pleadings Filed in This Proceeding, The Allocations Branch Was Not Free to Grant SBSF's Rulemaking Petition Without Further Inquiry

During the course of this proceeding, Joint Commenters have repeatedly pointed out to the Commission, numerous specific factual

inconsistencies and misstatements made by SBSF in its pleadings.[16] These factual misstatements were often in stark disagreement with engineering statements and charts supplied with such pleadings. Commenters also noted that SBSF refused to recant such misstatements even when identified. Given the presence of repeated internally verifiable misstatements of fact by SBSF that concern the merits of this proceeding, the Allocations Branch was incorrect to grant SBSF's proposal and terminate the proceeding without further inquiry.

For example, SBSF adamantly maintained, in contradiction to its own engineering exhibits, that the entire permissible site area for the Fort Myers Villas Allotment was on Sanibel Island.[17] However, even after this internally inconsistent statement was pointed out to SBSF, it repeated the claim.[18] Similarly, SBSF attempted to discredit the Joint Counterproposal by asserting that the modifications would result in the creation of an new

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[16] Given the fact that each of Commenters' pleadings filed after the close of the pleading cycle was accompanied by a motion for leave to file, and each dealt with affirmative misstatements or misrepresentations of fact by SBSF on the record of the proceeding, The Allocations Branch erred in refusing to consider them. The Allocations Branch also erred in refusing to consider continued expressions of interest and notices of intent to participate filed on behalf of WSUV, Inc. and Amaturo, each of which is a successor in interest to one of the original Commenters in this proceeding.

[17] See SBSF Reply Comments at p.9, and Figure 2 of Attachment 1 thereto.

[18] See Supplemental Joint Comments at p.2 (pointing out the inconsistency) and SBSF's Contingent Opposition to Supplemental Joint Comments, ("Contingent Opposition") at p.5 (reiterating misstatement).

underserved loss area containing 4,016 persons, despite the fact that the map supplied with their statement showed such area to be completely over Lake Okeechobee.[19]

In addition, SBSF made statements on the record effectively contradicting its own arguments. In its Reply Comments SBSF claimed that Commenters' proposed allotment facilities would result in a loss of service when compared to facilities proposed within an outstanding construction permit held by [Amaturo] SBSF Reply Comments at Exhibit 1, Figure 5. However, in a subsequent pleading, SBSF claimed that the Commission may not consider unbuilt construction permits in such computations because "there is no assurance that the facilities authorized in [a] construction permit will ever be constructed."[20] Therefore, SBSF effectively conceded its understanding that its loss of service arguments were flawed and misleadingly based on proposed rather than existing service to listeners.

In every instance where Commenters attempted to correct these inaccuracies, SBSF would compound them with new false statements. For example, when Commenters pointed out the existence of an alternate possible reference site area for the Fort Myers Villas allotment, SBSF attempted to mislead the Commission by characterizing the area as a "swamp euphemistically known as Punta

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[19] SBSF Reply Comments, at p.12, and Figure 4 of attachment 1 thereto. See also Supplemental Joint Comments, at p.3 (pointing out inconsistency and SBSF's failure to consider AM signals when falsely concluding the area to be underserved).

[20] Contingent Opposition, at p. 10.

Rassa," with "no existing towers." Contingent Opposition at p.7. To refute these blatant misrepresentations Commenters submitted documentation, including photographic evidence, demonstrating not only that such area was not a swamp, but that it in fact contained numerous high rise buildings, a world class resort, and several roof mounted antenna masts. Joint Reply to Opposition, at p. 5-10 and exhibit 2, attachments 1-8.

The Commission has previously stated that it must be able to expect total candor from its licensees and applicants at all times, and that "Congress was so concerned about an applicant's honesty that it expressly included false statements as a basis for license revocation."[21] The Commission noted that adverse findings have been made with regard to an applicant's qualifications if the applicant "withholds important information from the Commission or otherwise tries to create impressions designed to mislead the Commission - even in pleadings containing statements that are 'technically' correct but misleading as to the known state of facts." Id. at 998. In the instant case, SBSF had misstated or misrepresented the facts on so many issues and on so many occasions, that one could not possibly view its behavior as anything other than an intentional effort to mislead or deceive the Commission. Furthermore, as repeatedly pointed out by Commenters the numerous instances of misrepresentation were internally verifiable through examination of SBSF's own pleadings. Therefore it was error for the Allocations

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[21] RKO General, Inc., 47 R.R.2d 921, 998 & n.420 (1980)(citing 47 U.S.C. § 312(a)(1))

Branch to disregard these allegations, grant SBSF's petition, and terminate the proceeding without further inquiry.

## CONCLUSION

For the foregoing reasons, the decision of the Allocations Branch dismissing the Joint Counterproposal without consideration and granting SBSF's proposal constituted error and must be reversed. Wherefore, Commenters respectfully requests that the instant petition be granted and its Joint Counterproposal be adopted.

Respectfully submitted,

**AMATURO GROUP, LTD.**
**WSUV, INC.**
**JUPITER BROADCASTING CORPORATION**

By: _____
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## CERTIFICATE OF SERVICE

I, Rhonda Parrish, a secretary with the law firm of Rini & Coran, do hereby certify that I caused a copy of the foregoing "Joint Petition for Reconsideration" to be mailed, first-class, postage prepaid this 21nd day of September, 1994 to the following:

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